

§ 27.17

40 CFR Ch. I (7–1–15 Edition)

the matter only as part of its review of the initial decision upon appeal, if any.

[53 FR 15182, Apr. 27, 1988, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

- (a) Be accompanied, represented, and advised by a representative;
- (b) Participate in any conference held by the presiding officer;
- (c) Conduct discovery;
- (d) Agree to stipulations of fact or law, which shall be made part of the record;
- (e) Present evidence relevant to the issues at the hearing;
- (f) Present and cross-examine witnesses;
- (g) Present oral arguments at the hearing as permitted by the presiding officer; and
- (h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 27.18 Authority of the presiding officer.

- (a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.
- (b) The presiding officer has the authority to—
 - (1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
 - (2) Continue or recess the hearing in whole or in part for a reasonable period of time;
 - (3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - (4) Administer oaths and affirmations;
 - (5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
 - (6) Rule on motions and other procedural matters;
 - (7) Regulate the scope and timing of discovery;
 - (8) Regulate the course of the hearing and the conduct of representatives and parties;
 - (9) Examine witnesses;

- (10) Receive, rule on, exclude, or limit evidence;

- (11) Upon motion of a party, take official notice of facts;

- (12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

- (13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

- (14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

- (c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 27.19 Prehearing conferences.

- (a) The presiding officer may schedule prehearing conferences as appropriate.

- (b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

- (c) The presiding officer may use prehearing conferences to discuss the following:

- (1) Simplification of the issues;
 - (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
 - (3) Stipulations and admissions of fact as to the contents and authenticity of documents;
 - (4) Whether the parties can agree to submission of the case on a stipulated record;
 - (5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
 - (6) Limitation of the number of witnesses;
 - (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
 - (8) Discovery;
 - (9) The time and place for the hearing; and
 - (10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.
- (d) The presiding officer may issue an order containing all matters agreed